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Torts - Firearms - Liability for Sale to Minor in Violation of Criminal Statute

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of heat to be supplied to passengers and not the degree of care to be used. Since it would be impossible to satisfy the needs of everyone, it would seem that the only reasonable course of conduct a carrier could take would be to provide heat for persons of ordinary sensitivity.[13] This is distinguishable from the duty owed by a carrier in other situations such as avoiding accidents and undue delays where the exercise of care operates for the benefit of all passengers regardless of their health conditions.

It is submitted that the carrier should be liable for injuries to feeble or infirm persons in its general operations even though no injury would have resulted to persons of ordinary health. It is true that they have not been so held in the "heat cases," but these should not be extended, for the reasons indicated. The common carrier serves a large, indeterminate group of individuals and should conduct its operations with care consistent with the knowledge that some of its passengers may be feeble and infirm.

Martin Smith, Jr.

TORTS — FIREARMS — LIABILITY FOR SALE TO MINOR IN VIOLATION OF CRIMINAL STATUTE

Plaintiff, a sixteen-year-old minor, sued to recover damages for the loss of his thumb caused by the accidental discharge of a rifle sold him by defendant. The sale was made in violation of a city ordinance which prohibited the sale of deadly weapons to minors under seventeen, and of a state statute which proscribed the sale of any pistol, repeating rifle, bowie knife, brass knuckles, or sling-shot to any minor. The trial court excluded the defense of contributory negligence[1] and granted plaintiff's motion for summary judgment. The district court of appeal affirmed the granting of the motion for summary judgment holding that defendant's violation of the statute and ordinance amounted to negligence in itself. The trial court's rejection of the defense of contributory negligence was affirmed on the ground that the statute and the ordinance were designed to protect minors against their own carelessness. On certiorari to the

13. Stated differently, the risk of injury to the class of passengers sensitive to cold cannot be protected by any course of conduct of the carrier without the possibility of endangering that class of passengers sensitive to heat. See Annot., 33 A.L.R.2d § 1358 (1954).

1. The defense was grounded on defendant's carelessness in holding the barrel of a rifle he knew to be loaded while riding in an automobile.

Florida Supreme Court, *held,* writ discharged and district court of appeal decision approved. Violation of a statute designed to protect minors against the risk of injury by firearms is negligence per se, and the minor's contributory negligence is not a defense. *Tamiami Gun Shop v. Klein,* 116 So.2d 421 (Fla. 1959).

Where a civil cause of action is predicated upon defendant's violation of a criminal statute designed to protect minors against the risk of bodily harm caused by their immaturity or inexperience, the majority of courts have held that contributory negligence per se, and the minor's contributory negligence is not a dejury.[2] This is based on the theory that self-injury is the very type of harm the statute was designed to prevent. However, some courts admit contributory negligence as a defense, stating that the violation of the statute is not the proximate cause of the damage, or that the defendant could not have foreseen the injury.[3]

Although a proper application of the statutory duty not to sell firearms to minors may in most cases achieve the same result as would the common law duty to use reasonable care, the duty imposed by a statute of this kind is not predicated on fault.[4]

2. E.g., cases involving violation of child labor acts: Terry Dairy Co. v. Nalley, 146 Ark. 448, 225 S.W. 887 (1920); Dusha v. Virginia & Rainey Lake Co., 145 Minn. 171, 176 N.W. 482 (1920); Karples v. Heine, 227 N.Y. 74, 124 N.E. 101 (1919); Lenahan v. Pittston Coal Min. Co., 218 Pa. 311, 67 Atl. 642 (1907); Pinoza v. Northern Chair Co., 152 Wis. 473, 140 N.W. 84 (1913).

See cases involving illegal sale of dangerous substances to children: Pierson v. London, 102 Pa. Super. 176, 156 Atl. 719 (1931); Pizzo v. Wieman, 149 Wis. 235, 134 N.W. 899 (1912); Burr v. Hatch, 38 Pa. County Ct. 161 (1881).

3. A substantial minority allow contributory negligence as a defense for violation of a child labor act, e.g., Darsam v. Kohlman, 123 La. 164, 48 So. 781 (1909); Smith v. National Coal & Ice Co., 135 Ky. 671, 117 S.W. 280 (1909); Berdos v. Tremont & S. Mills, 209 Mass. 489, 95 N.E. 876 (1911); Besonem v. Campbell, 243 Mich. 209, 220 N.W. 301 (1928); Boesel v. Wells, F. & Co., 260 Mo. 463, 169 S.W. 110 (1914); Norman v. Virginia-Pocahontas Coal Co., 68 W.Va. 405, 69 S.E. 857 (1910); Morris v. Stanfield, 81 Ill. App. 264 (1899); Lee v. Sterling Silk Mfg. Co., 115 App. Div. 589, 101 N.Y. Supp. 78 (1906); Belles v. Jackson, 4 Pa. D. & C. 194 (1893).

There is little judicial dissent concerning violations of statutes prohibiting the sale of dangerous articles to minors, e.g., Hulsey v. Hightower, 44 Ga. 455, 161 S.E. 664 (1932); Decicco v. Vodrazka, 291 Ill. App. 612, 9 N.E.2d 451 (1937); Hartnett v. Boston Store of Chicago, 185 Ill. App. 332, 106 N.E. 837 (1914); Poland v. Earhart, 70 Iowa 285, 30 N.W. 637 (1886).

4. E.g., McMillen v. Steele, 275 Pa. 584, 119 Atl. 721 (1923); Pizzo v. Wiemann, 149 Wis. 235, 134 N.W. 899 (1912). These cases involve statutes prohibiting the sale of dangerous articles to minors.

See cases where employer held liable for violation of child labor act even though he acted in good faith and employed the infant in ignorance of his age: Beauchamp v. Sturges & Burns Mfg. Co., 250 Ill. 303, 95 N.E. 204 (1911); Blanton v. Kellioka Coal Co., 192 Ky. 220, 232 S.W. 614 (1921); Dusha v. Virginia & Rainey Lake Co., 145 Minn. 171, 176 N.W. 482 (1920); Krutlies v. Bulls Head Coal Co., 249 Pa. 162, 94 Atl. 459 (1915).

See Prosser, *Contributory Negligence as Defense to Violation to a Statute,* 32 MINN. L. REV. 105, 118 (1948).

The gun dealer who sells a weapon to a minor below the prescribed age need not have foreseen the minor's negligence to be held liable.[5] This is liability analogous to that imposed upon persons who employ children in violation of child labor acts.[6] In addition to this imposition of liability without fault, there is indication that the ambit of protection afforded third persons by these statutes is more extensive than that provided by the common law duty to use reasonable care.[7] Despite the fact that liability under criminal statutes designed for the protection of minors is quite different from liability under ordinary rules of negligence law, the decisions are almost invariably couched in negligence language.[8] This is an illustration of the general tendency of courts to associate a statute with the type of common law liability most closely related to the statute. Such an approach enables employment of the more familiar rules and doctrines that are generally applied in negligence controversies.[9]

Although a Louisiana statute[10] prohibits the sale of firearms and other dangerous weapons to minors, there are no reported cases based on the illegal sale of a firearm to a minor.[11] However, the courts have been faced with cases involving the analogous situation of illegal employment of minors.[12] In *Darsam v.*

5. See Anderson v. Settergren, 100 Minn. 294, 111 N.W. 279 (1907); Fowell v. Grafton, 22 Ont. L.R. 550 (1910).

6. See Terry Dairy Co. v. Nalley, 146 Ark. 448, 225 S.W. 887 (1920); Dusha v. Virginia & Rainey Lake Co., 145 Minn. 171, 176 N.W. 482 (1920); Karples v. Heine, 227 N.Y. 74, 124 N.E. 101 (1919); Lenahan v. Pittston Coal Mining Co., 218 Pa. 311, 67 Atl. 642 (1907); Pinoza v. Northern Chair Co., 152 Wis. 473, 140 N.W. 84 (1913).

7. E.g., Sickles v. Montgomery Ward & Co., 167 N.Y.S.2d 977 (1957) (vendor held liable for sale of air rifle to the father of a minor because he knew the weapon would be used by a minor under the age prescribed by a statute prohibiting the sale of such weapons); Henningsen v. Markowitz, 230 N.Y. Supp. 313, 132 Misc. 547 (1928) (merchant who sold an air rifle to a minor was held liable to a third person whom a friend of the minor had negligently shot after the parents of the minor vendee had taken the gun from him and he had regained it).

8. E.g., Spires v. Goldberg, 26 Ga. App. 530, 106 S.E. 585 (1921); Binford v. Johnston, 82 Ind. 426, 42 Am. Rep. 508 (1882); Anderson v. Settergren, 100 Minn. 294, 111 N.W. 279 (1907); Zamora v. J. Korber & Co., 59 N.M. 33, 278 P.2d 569 (1954); Sickles v. Montgomery Ward & Co., 167 N.Y.S.2d 977 (1957); Henningsen v. Markowitz, 230 N.Y. Supp. 313, 132 Misc. 547 (1928); McMillen v. Steele, 275 Pa. 584, 119 Atl. 721 (1923); Wassel v. Ludwig, 92 Pa. Super. 341 (1927); Bernard v. Smith, 36 R.I. 377, 90 Atl. 657 (1914); Schatter v. Bergen, 185 Wash. 375, 55 P.2d 344 (1936); Fowell v. Grafton, 22 Ont. L.R. 550 (1910).

9. See Dart v. Pure Oil Co., 223 Minn. 526, 27 N.W.2d 555 (1947). See also PROSSER, TORTS § 34 (2d ed. 1955).

10. LA. R.S. 14:91 (1950).

11. Third persons injured by minors entrusted with dangerous weapons are afforded some measure of protection under LA. CIVIL CODE art. 2318 (1870), which provides for parents' vicarious liability for the torts of their children. E.g., Sutton v. Champagne, 141 La. 469, 75 So. 209 (1917); Mullins v. Blaise, 37 La. Ann. 92 (1885); Marionneaux v. Brugier, 35 La. Ann. 13 (1883); Phillips v. D'Amico, 21 So.2d 748 (La. App. 1945); Wright v. Petty, 7 La. App. 584 (1927).

12. Picou v. J. B. Luke's Sons, 204 La. 881, 16 So.2d 466 (1943); Aymond v.

Kohlman[13] the Louisiana Supreme Court held that a minor's contributory negligence was a defense in a suit based on the defendant's violation of the child labor act.[14] However, language in later opinions casts some doubt on this conclusion.[15]

The statute in the instant case prohibited not only the sale of firearms but also brass knuckles, bowie knives, and sling-shots as well. It is arguable that this indicates an intention to protect only third persons from harm caused by the aggressive conduct of minors.[16] The court, however, construed the same enactment as being designed to protect minor vendees from negligent self-injury. This is justified not only because the courts have traditionally attributed a two-fold nature to such statutes, but also as a desirable policy of condemning more than one evil with the same phrase. The exclusion of a defense based on contributory negligence is consistent with this and appears to be grounded on sound legal analysis. It would seem the plaintiff's contributory negligence has no bearing whatsoever on the determination of liability without fault under statutes of this kind. But even in the absence of a statute, under the common law rules of negligence the defendant's duty to use reasonable care toward the plaintiff as a member of a characteristically careless class of persons should not be excused because that carelessness is evinced.

It is submitted that the holding in this case reflects a policy of vigorous protection of children from bodily harm. Apparently

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Western Union Tel. Co., 151 La. 184, 91 So. 671 (1922); Flores v. Steeg Printing & Publishing Co., 142 La. 1068, 78 So. 119 (1918); Alexander v. Standard Oil Co., 140 La. 54, 72 So. 806 (1916); Dalberni v. New Orleans Can Co., 139 La. 49, 71 So. 214 (1916); Darsam v. Kohlman, 123 La. 164, 48 So. 781 (1909); Cutrer v. Southdown Sugars, 42 So.2d 314 (La. App. 1949); Cropper v. Mills, 27 So.2d 764 (La. App. 1946); Bagesse v. Thistlewaite Lumber Co., 125 So. 322 (La. App. 1929).

13. 123 La. 164, 48 So. 781 (1909). *Cf.* Dalberni v. New Orleans Can Co., 139 La. 49, 71 So. 214 (1916).

14. LA. R.S. 23:161 *et seq.* (1950).

15. Picou v. J. B. Luke's Sons, 204 La. 881, 16 So.2d 466 (1943); Flores v. Steeg Printing & Publishing Co., 142 La. 1068, 78 So. 119 (1918); Alexander v. Standard Oil Co., 140 La. 54, 72 So. 806 (1916); Bagesse v. Thistlewaite Lumber Co., 125 So. 322 (La. App. 1929).

Although there have been several cases denying recovery for injuries sustained during employment in violation of the age certificate requirement and limited work hour requirement for employees between the ages of 14 and 16, not since *Darsam v. Kohlman* has recovery been denied in the face of a violation of the absolute prohibition of employment of minors below 14.

16. Another interesting feature of the statute involved is that it prohibits only the sale of pistols and Springfield or other repeating rifles. It is difficult to appreciate why the legislature should have restricted its proscription to this type of weapon. It is submitted, however, that this feature has little bearing on the outcome of the present controversy.

this is deemed to be an interest of paramount importance which warrants the imposition of absolute statutory liability for its invasion. The instant case appears to present a reasonable application of a statute in furtherance of this policy.

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TORTS — LIABILITY OF TAVERN KEEPERS FOR INJURIOUS CONSEQUENCES OF ILLEGAL SALES OF INTOXICATING LIQUORS

Two recent decisions have imposed upon vendors of intoxicating liquors a hitherto unrecognized liability. In a federal case, plaintiffs sought damages for injuries sustained when their automobile was struck in Michigan by an automobile the intoxicated driver of which had been sold liquor by defendant tavern keepers[1] in Illinois in violation of that state's criminal statute[2] prohibiting sales to intoxicated persons. The district court sustained defendants' motion to dismiss. On appeal to the United States Court of Appeals, *held,* reversed. One who sells liquor to an intoxicated person in violation of a criminal statute prohibiting such sales is liable for injuries resulting from the drunkenness to which the particular sale contributes. *Waymick v. Chicago's Last Department Store,* 269 F.2d 322 (7th Cir. 1959).

In a New Jersey case, plaintiff sought damages for the death of her husband resulting from a collision between an automobile driven by him and one carelessly driven by an intoxicated minor to whom the defendant tavern keepers had sold liquor in violation of a criminal statute[3] and an administrative regulation[4] prohibiting sales to minors and intoxicated persons. The Law Division granted the defendants' motion for summary judgment. The New Jersey Supreme Court certified the matter on its own motion and, *held,* reversed. A tavern keeper who sells intoxicating liquor to a person whom he knows or should know to be a minor or intoxicated is liable for injuries to third persons resulting from such sales. *Rappaport v. Nichols,* 31 N.J. 188, 156 A.2d 1 (1959).

1. The term "tavern keepers" is used herein to denote vendors of intoxicating liquors generally. Specifically excluded are gifts by a social host to his guest.
2. ILL. REV. STAT. ch. 43, § 131 (Supp. 1959).
3. N.J. Stat. Ann. 33:1-77 (1940) (prohibiting sales to minors).
4. Division of Alcoholic Beverage Control, Regulation No. 20, Rule 1 (prohibiting sales to intoxicated persons).